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The Solicitors' Journal

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Current Topics.

Retirement of Scottish Judge.

THE recent announcement that LORD BLACKBURN, one of the judges of the First Division of the Court of Session, has tendered his resignation, after seventeen years' active service, has an interest for English members of the profession additional to that aroused in the ordinary case by a change in the personnel of the Scottish Bench. In the first place, he belongs to the family which gave the English Bench that great lawyer COLIN BLACKBURN, who after serving what we may call a legal apprenticeship as a reporter in the "firm" of Blackburn and Ellis, was appointed a judge of the Queen's Bench, and in due time one of the Lords of Appeal in Ordinary, thus strengthening the ultimate tribunal by his massive learning and practical familiarity with procedure. But the Scottish judge who bears the same judicial title as his ancestor has an additional interest for English lawyers in that he was the first Scottish judge to sit judicially in the Royal Courts of Justice. In 1933, it may be recalled, the Railway and Canal Commission, constituted by Mr. Justice MACKINNON, LORD BLACKBURN and Sir FRANCIS DUNNELL, sat in King's Bench Court IX, the incident giving rise to some wonderment on the part of those unacquainted with the provisions of the Railways (Valuation for Rating) Act, 1930, which enacted that any appeal against a decision of the Anglo-Scottish Railways Assessment Authority should be heard by the *ex officio* Commissioners for England and Scotland and one of the appointed Commissioners, the underlying idea of this arrangement being to ensure as far as possible uniformity in the rating of the railways which served both countries. LORD BLACKBURN was the *ex officio* Commissioner for Scotland, and it was in this capacity that he took part in the hearing of the appeal in 1933.

Ribbon Development Act: Final Stages of Bill.

THE introduction into the Restriction of Ribbon Development Bill by the Standing Committee of an amendment to cl. 7 (which is concerned with general provisions as to consents by a local authority to building within the restricted areas), providing for the reference of disputes between applicants for consents and highway authorities to a court of summary jurisdiction with a right of appeal to quarter sessions led to the discussion in the Report state of a principle of considerably greater importance than the Bill itself. The question whether differences between individuals and authorities arising in the course of the carrying into effect of an Act of Parliament should be determined by the courts of law or by executive Ministers is obviously not one which can be discussed here, but mention may be made of the check which the tendency to favour the latter rather than the former received by the substitution in the Housing Act, 1930, of the county court for the Minister of Health as the arbiter of certain questions arising in the administration of housing law. Reverting to the Restriction on Ribbon Development Bill, Mr. HORE-BELISHA, who moved an amendment to cl. 7, providing for the determination of disputes thereunder by the Minister of Transport, referred to the distinction drawn in one of the recommendations of the Ministers' Powers Committee between those powers which are purely judicial and those which are quasi-judicial. A judicial decision was based on the application of the law of the land to the facts ascertained, a quasi-judicial dispute involved considerations of public policy, and, in the last resort, was a decision not as to the respective legal rights and obligations of the parties, but as to what it was right in the public interest to do. "Quasi-judicial decisions," the Committee stated, "fall naturally to Ministers themselves and not to courts of law or Ministerial Tribunals." The Minister of Transport said that no one would deny that the building of a road in conditions of safety, and the determination of where access and building should be along that road, was an administrative matter, involving no question of law—"for," he said, "the law is here in this Bill"—or question of fact, because the fact was plain that the highway authority had or had not to give consent in any particular case.

An Administrative Dispute.

THE Solicitor-General referred to the confusion which had been imported into the discussion by the term "quasi-judicial," which did not mean that the dispute a Minister was deciding was really a judicial dispute, but that Parliament, having laid down that he should conduct an inquiry, that inquiry then proceeded on judicial lines. Whether a dispute was administrative or judicial depended, it was intimated, on its nature. An authority refusing means of access had to consider the matter in the light of administrative knowledge of what means of access were desirable. That, it was said, was a purely administrative question, depending for its answer not on any legal precedent but on sufficient familiarity with the expert data and with expert opinion on the subject, and the application, as an expert, of that data and that knowledge to the question. The amendment—which also provides that the Minister shall, if required either by the highway authority or the applicant, cause a local public inquiry to be held and publish a summary of the facts as found by him and his reasons for the decision—was carried by a substantial majority. The clause which it amends was, it will be remembered, carried against the Government by the Standing Committee concerned

Other Amendments.

AMONG other amendments introduced during the Report stage may be mentioned one which was agreed to and which requires a highway authority to have notice sent to any person whose name and address are on the register of persons kept by the highway authority for the purpose of the resolution

specifying the standard width of road it is proposed to adopt, under cl. 1, and the time within which objection can be made by the owners and occupiers of land affected. The keeping of such a register is prescribed by an amendment already referred to in this column. Another amendment which was agreed to requires the highway authority and the Minister in determining the standard width to be adopted for any road to have regard to "the requirements of all classes of traffic, including foot passengers and cyclists likely to use the road," and to consider "the provision of margins for ridden horses and driven livestock." The conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only, and the reconversion into a dwelling-house of any building which has been discontinued as or appropriated for any other purpose than that of a dwelling-house, have been excluded from the alterations to which a consent may be withheld, or made subject to conditions, in the case of buildings existing prior to the date of the coming into force of restrictions (Third Schedule). The Report and Third Reading stages of the Bill were concluded in the House of Commons last Monday week. The Commons' Amendments were agreed to in the House of Lords on the following Thursday, the Royal Assent being given on the next day.

Imprisonment for Debt.

SINCE we last touched upon this subject the Money Payments (Justices Procedure) Bill has passed through all stages in the House of Commons to which it was sent after having passed through the House of Lords. In moving the Second Reading of the Bill in the House of Commons last Friday week the Home Secretary alluded to the "real mischief of the present system" which was that, where a person failed to pay a fine imposed by the justices, imprisonment followed almost automatically, without any further consideration of the circumstances in which the fine had not been paid. The new principle provides for an examination by a magistrate of the specific case where a fine has not been paid for the purpose of ascertaining and deciding what is the fair thing to do. "If it is ascertained," SIR JOHN SIMON said, "that the explanation of the failure to pay the fine is a good one, then, of course, imprisonment ought not automatically to follow. But if a person who can pay a fine refuses to pay there is nothing for it but for him to go to prison." The Bill provides for the application of a similar principle in the case of payments ordered to be made for the maintenance of wives, or under affiliation orders and in the case of orders to pay rates with the alternative of imprisonment. If on examination of the circumstances the magistrates think that the explanation of non-payment has nothing to do with either the wilful refusal or the culpable neglect of the person involved, imprisonment cannot take place. The Bill makes provision for the detention of a person for one night in a police station in some cases of failure to pay a small fine, and also contemplates the placing under supervision of a person allowed time for payment. No person under 21 years of age is to be sent to prison for failure to pay a fine unless supervision has been tried or there is some special reason for not adopting that course. Inquiry into a person's means is now to be required before imprisonment is ordered in wife-maintenance and affiliation cases. SIR JOHN SIMON adverted to the necessity of the whole scheme and details of the machinery which do not appear in the Bill itself becoming well known throughout the country before the measure can be brought into operation. His proposal to send a communication to the different Benches and clerks to magistrates, in order that so far as possible their existing practice may be framed in view of the considerations which prompted Parliament to carry the Bill, was commended by another member, who said that a circular of such a kind would have almost as great an effect as the Act itself and further expressed the opinion that there was a vast field open to the legal reformer at the Home Office and the hope that the present Bill was a mere instalment in that direction. The Bill received the Royal Assent on the 2nd August. An article on the subject appears at p. 583 of this issue.

Royal Assent.

AMONG the ninety-five Bills (see list at p. 594 of this issue) to which the Royal Assent was given prior to the adjournment of both Houses of Parliament on 2nd August until 29th October were the following:—Government of India, Restriction of Ribbon Development, Housing, Housing (Scotland), Appropriation, Cattle Industry (Emergency Provisions) (No. 2), Teachers (Superannuation), Money Payments (Justices' Procedure), and House of Commons Disqualification (Declaration of Law). Of the foregoing, we have dealt at some length in this column with the Housing Bill, the provisions of which are of importance to many practitioners. A further note on the Restriction of Ribbon Development Bill in regard to the matters arising on its concluding stages appears in the present issue.

Recent Decisions.

In *Cattermole* v. *Marks and Spencer, Ltd.* (*The Times*, 26th July), a claim for damages for an alleged breach of an implied warranty that a tin of peas bought at one of the defendants' shops was fit for human consumption failed. The plaintiff, it was held, had to prove not only that her illness was due to the peas, but also that they were unfit for consumption. The condition of dermatitis from which she had suffered since eating the peas might be due to some condition of the person consuming them. Moreover, the plaintiff had not suffered from certain physical conditions which invariably accompany food poisoning.

In *H. M. Postmaster-General* v. *Birmingham Corporation*, (79 SOL. J., 592), the Court of Appeal dismissed an appeal from the judgment of GODDARD, J., who had held that the Postmaster-General was liable to pay the cost of alterations to telegraphic lines occasioned by alterations of streets in the course of the carrying out of a town planning scheme. The matter was within s. 15 of the Telegraph Act, 1863, and the plaintiff would have been liable whether the defendant corporation were acting under the Housing and Town Planning Acts or the Highway Act. The previous decision is reported in our issue of 24th November, 1934 (78 SOL. J. 840).

DAMAGES amounting to £1,850 under the Fatal Accidents Act, 1864, were awarded in *Slater* v. *Spreag* (*The Times*, 1st August) to the widow of one who was killed by being struck by a motor car, and a further sum of £18 was added in respect of funeral expenses under s. 1, sub-s (2) (*c*) of the Law Reform (Miscellaneous Provisions) Act, 1934. Further claims in respect of (*a*) the pain and suffering incurred; and (*b*) a shortening of the expectation of life, were negatived, for although claims under those heads were capable of surviving to the benefit of the estate by virtue of the Act last named, it had not been proved in regard to the former that the deceased had in fact suffered any pain, since he seemed to have been unconscious from the moment of the accident until he died, while in regard to the latter a right to damages thereunder must, it was held, be based on the distress caused by a knowledge of impaired health.

In *Berry and Another* v. *Tottenham Hotspur Football and Athletic Co. Ltd.* (*The Times*, 1st August) the court declined to allow interrogatories to be administered on the refusal of the defendants to register a transfer of one of the shares of the company. One of the articles of association empowered the directors to decline to register a transfer of shares in some circumstances and provided that the directors should not be bound "to specify the grounds" upon which registration was refused. The case was distinguished from that of *Duke of Sutherland* v. *British Dominions Land Settlement Corporation Ltd.* [1926] 1 Ch. 746, where the words in question were, "without assigning any reason." The words in the present case were, CROSSMAN, J., said, very much stronger. To allow interrogatories would be to override an agreement by which the parties were bound.

Money Payments (Justices Procedure) Act, 1935.

[CONTRIBUTED.]

As the general principle of the Act is no doubt founded upon the report of a committee especially appointed to consider alleged defects in the procedure for the recovery of fines, and as the measure has received the warmest welcome in each house of Parliament, it would be futile to question the desirability of the main object. So far, however, as the drafting is concerned and some subordinate provisions, the Act is fairly open to criticism. That which is noticeable in the first instance is the somewhat inapt title, for as the Act deals entirely with the procedure of summary courts the more obvious name would seem to be the "Summary Jurisdiction Act, 1935." It would thus form one of the series of such Acts to be included in the Interpretation Act, 1889, definition of the "Summary Jurisdiction Acts" and so be easily referred to. The first section is to be welcomed as, apart from the proviso, it recognises the logical procedure in such a case.

Unfortunately the forms appended to rules under the Summary Jurisdiction Acts regard any anticipatory suggestion of the term in default as part of the sentence. Such a suggestion is, of course, premature, as the question of the term of imprisonment does not arise until default, and may be dealt with by a single justice, who may not have been a member of the convicting court, his function being not one of punishment but merely the fixing of such length of imprisonment as may, in his opinion, be calculated to enforce payment.

Section 2 is designed to remove the proceedings, where the defendant is not residing in the original petty sessional division, to another petty sessional division, not necessarily, however, where the defendant is residing. It is curious that a stray justice should be introduced to make the order of removal, when the obvious authority would seem to be the original convicting court, which would be familiar with the facts of the case.

There is no guidance at all as to the procedure which would be applicable in the case of the individual justice.

It is presumed that the application should be in "open court," but the wording of the clause seems to suggest an *ex parte* application.

As, however, the proposed transfer of the proceeding to another petty sessional division may be prejudicial to either party, an order could not justly be made unless the party other than the one applying had an opportunity of being heard: *Ex parte Francis* [1903] 1 K.B. 275, 67 J.P. 153. The necessity of a summons would thus seem to arise.

Section 3 which is to ensure a defendant receiving notice in writing of the amount of the fine, the time allowed for payment, and the place of payment is well designed so long as it affects an absent defendant, but seems superfluous when the defendant is present. At a busy court the extra clerical work involved in informing the defendant of the simple matters which he has already heard stated will be extremely burdensome, to say nothing of the delay necessitated before he can leave the court.

Section 4 which provides a short detention at a police station in lieu of a term of imprisonment does not say in terms what the effect of such detention is to be, so one is left to the assumption that, as in the case of imprisonment, the obligation to pay the fine will be entirely cancelled.

Section 1 (3) of the Criminal Justice Administration Act, 1914, instituted a permissive system of supervision in the case of a defendant under twenty-one years of age where he was allowed time for the payment of a fine.

The Act repeals this section but by s. 5 such supervision may be applied even in the case of an adult. In neither section are there sufficient instructions as to the duty of the supervisor, but by a rule made under the repealed section, he must "advise and befriend the defendant with a view to inducing him to pay the penalty and so avoid imprisonment."

The Act, however, next enacts that where there is supervision, the court, before the issue of a warrant in default of payment, "must consider an oral or written report as to his (the defendant's) conduct and means." The more amicable spirit of the rule seems thus rather beyond the scope of the section. A supervisor may be appointed by the court, but, unfortunately, there seems to be no provision for remuneration. A report may be very detrimental to a defendant, but there is no guide in the Act as to whether this hearsay evidence is to be considered in camera behind his back, or in open court. However that may be, it is certainly a novelty in criminal procedure that a tribunal should be invited to act upon evidence which may be hearsay to the second or third degree.

Section 6 (1) provides that a person who has not attained the age of twenty-one years must not be sent to prison for non-payment of a fine unless he has been placed under supervision but, strange to say, that under the section the appearance of age is substituted for the actual age, for (3) is to the effect that "for the purposes of this section a person shall be deemed not to have attained the age of twenty-one years if he appears to the court or justice not to have attained that age."

It would seem that the word "appears" refers exclusively to the opinion which a court may form upon the physical view of the personality of a defendant, so that if adjudged sufficiently juvenile, he must submit to supervision, even if he is in a position to prove by strict legal evidence other than "appearance" that he is years older than the stipulated age.

It may be flattering, especially in the case of a female offender to be adjudged younger than the actual fact, yet the incubus of supervision may, notwithstanding, be resented.

Possibly it was intended that it was upon failure of satisfactory oral or documentary proof of age, conjecture upon view should prevail, but, unfortunately, the section is not to that effect.

Section 9 dispenses with the necessity of "fresh evidence" upon which to found an application for the revocation, revival, or variation of an order for periodical payments: see Criminal Justice Administration Act, 1914, s. 30 (3).

This seems to disregard the maxim "*Debet esse finis litium.*"

It is to be hoped that the latitude here given will not lead to vexatious proceedings, for within a short period, say, a month, it will be open to the dissatisfied party to try to upset a recent decision, without alleging any fresh ground whatever. Supposing that he is successful, the latter tribunal if constituted in the same way will stultify itself, but if the members of the bench are different they will be acting as a court of appeal from their own colleagues, acting as a co-ordinate court. And there may be a series of conflicting decisions, especially if the parties take into consideration the known proclivities of those members of the bench who they anticipate may sit. Passing over that part of the Act which refers to rates, there is only one further matter calling for comment. Section 12 is a valuable provision as to proof of means, providing as it does, that the written statement of an employer as to wages received by one in his employment shall be evidence. It is suggested that "salary or stipend" should be added so that the case of those paid in that way should be included, "wages" being limited to workmen and to domestic servants, as it might be contended.

During the vacation the interior of the Old Bailey is to undergo a thorough renovation, for the first time for several years. The four Courts are in the hands of decorators. All the oak work is to be re-polished, and the marble pillars, floors, and walls of the two great halls are also to receive attention.

Sales of Legal Estates by a Constructive Trustee.

In a recent article (79 Sol. J. 152) we considered the position where A contracts to sell the legal estate in land which he holds as constructive trustee for B, a single *cestui que trust*. The purpose of the present article is to examine the position where there is more than one *cestui que trust*. We shall assume throughout that the purchaser can be effectively fixed with notice of the equity.

1. On a purchase of land A, B and C provide the purchase money in equal shares : they are not partners. The conveyance is taken in the name of A alone. It follows, under the ordinary rule of equity, that A holds the legal estate on trust for A, B and C as joint tenants. Here, obviously (to use the words of sub-s. (1) of s. 36 of the Law of Property Act), the " legal estate is . . . held in trust for " A, B and C " as joint tenants," and the land is not settled land. Consequently the statutory trust for sale is imposed upon the legal estate by that sub-section. It is immaterial when the conveyance to A took place. If it was before 1926, the statutory trusts were imposed at the first moment of 1926 (cf. *Re Gaul & Houlston* [1928] Ch. 689) ; if it was after 1925 the land was subject to the statutory trusts from the time that the conveyance took effect.

In order to comply with sub-s. (1) of s. 42 of the Law of Property Act, it is essential that title should be made under the trust for sale. But A is a sole trustee for sale, and cannot give a good receipt for the purchase money. It will therefore be necessary for him to appoint a co-trustee to satisfy sub-s. (2) of s. 27 of the Act. When that is done, the two trustees for sale can, of course, make title to the legal estate free from the equities.

2. On the other hand, A, B and C may well be tenants in common in equity ; they may, for instance, have provided the purchase money in unequal shares, or have provided it equally but be in partnership. In view of the decision in *Re Fuller's Contract* [1933] Ch. 652, it is not necessary for the present purpose to distinguish between partnership cases and other instances of tenancy in common. The legal estate is, of course, conveyed again to A alone.

When A comes to sell the legal estate, which he holds as constructive trustee for the three tenants in common, there seems to be a most unfortunate distinction according as whether the conveyance to A was before or after 1st January, 1926.

(*a*) Where the conveyance to A was before 1926, it is reasonably plain that the statutory trust for sale was imposed on the legal estate by virtue of sub-para. (1) of para. 1 of Pt. IV of the First Schedule to the Law of Property Act. For " immediately before the commencement of " the Act " the entirety of the land is vested in trustees . . . on trust for persons entitled in undivided shares." The legal estate was therefore held by A as from the beginning of 1926 as sole trustee for sale (cf. *Re Myhill* [1928] Ch. 100). On a sale title must be made under the trust for sale, and a co-trustee must be appointed to receive the purchase money, just as in the case of an equitable joint tenancy.

(*b*) It is extremely difficult to say what the position is where the conveyance to A occurred after 1925.

Sub-section (1) of s. 34 of the Law of Property Act provides that :—

> " An undivided share in land shall not be capable of being created except as provided by the Settled Land Act, 1925, or as hereinafter mentioned."

In the present case the Settled Land Act obviously has no application, as the land is at no stage settled land, nor is there any trust instrument. Nor can sub-ss. (3) and (4) of s. 34 of the Law of Property Act apply, for they deal with devises and settlements of undivided shares. One would naturally expect the statutory trust for sale to be imposed by sub-s. (2) of s. 34, but it is by no means clear that anything of the sort occurs. That sub-section applies :—

> " Where, after the commencement of this Act, land is *expressed* to be conveyed to any persons in undivided shares . . ."

In our case the land was expressed to be conveyed to A as beneficial owner and the tenancy in common arises solely by construction of equity.

It is possible that there is really a lacuna in the Act at this point, but it is tentatively submitted that the solution of the difficulty is as follows : Sub-section (6) of s. 1 of the Law of Property Act prohibits altogether the *subsistence or creation* of a *legal* estate in an undivided share in land. Section 34 restricts the *creation* of both legal and equitable interests in undivided shares in land, but says nothing about their *subsistence*. Construing the Act " *ut res magis valeat quam pereat* " it is submitted that " create " is a word that connotes the deliberate act of the parties, and has no reference to the supervening construction of equity. This view is supported by the later sub-sections of s. 34, all of which are concerned with acts done by the parties. If this view is correct, and it is submitted with considerable diffidence, it would follow that, contrary to the normal opinion, it is still possible for undivided shares in land to subsist in equity, in any case where such subsistence is not precluded by the express provisions of the Act. If so, it would seem that in the case in hand there will be no trust for sale, but A will hold the legal estate as constructive trustee for A, B and C as tenants in common. Consequently a purchaser from A (with notice) will not acquire the legal estate free from the equities unless he obtains the concurrence of A, B and C, as persons equitably entitled. Such concurrence may be signified by their joining in the conveyance, or signing the receipt for the purchase money, or by writing a letter approving the transaction.

We have assumed in all these cases that the purchaser is affected by notice of the equities. In most cases he will probably have no notice at all ; if so, the purchaser in good faith will acquire a good title from A, who is *primâ facie* a beneficial owner. But the most extraordinary aspect of the whole matter is this ; apparently whether the legal estate is or is not subject to a trust for sale actually depends on whether any given purchaser has or has not notice of the equities. In face of a purchaser in good faith and without notice the land is not subject to a trust for sale in any of the cases we have been considering. In face of a purchaser with notice, it is clear that two of these same classes of land (though probably not the third) are subject to a trust for sale. Such a conclusion seems most anomalous, and it is submitted that the whole subject might merit some consideration on the occasion of any future amendment of the Law of Property Act.

Company Law and Practice.

When Schemes of Arrangement with Shareholders are necessary.

Schemes of arrangement affecting large concerns have recently been given a good deal of prominence, and whilst I do not propose to consider any particular one of these at the moment (for the questions at issue were, I think I am right in saying, very largely questions of fact), they have suggested to me that it might be profitable to consider again the question of the necessity of a scheme of arrangement where the interests of a class of shareholders are to be affected ; for I have found more than once a tendency to assume that an alteration of the rights attaching to one class of shares must inevitably involve a scheme of arrangement, whilst in other cases it has been proposed to effect such an alteration without going to the court, when, in fact, it turned out that proceedings under s. 153 of the Companies Act, 1929, were unavoidable.

I am not proposing to consider in this article schemes of arrangement with creditors or the procedure under s. 153 or the practical considerations which must be kept in mind in formulating such schemes; but to discuss in what cases rights attaching to one class of shares can be altered without invoking the aid of s. 153, and in what cases recourse will have to be had to that section. The question, as we shall see, depends upon the relevant provisions of the memorandum of association.

Ashbury v. *Watson*, 30 Ch. D. 376, is, I think, the starting point of our inquiry, for the decision in that case shows clearly when the rights annexed to a class of shares cannot (apart from s. 153) be altered. There the memorandum of association of the company provided that a portion of the shares were to have a right to receive a preferential dividend and there was no power to modify that provision contained in the memorandum. Special resolutions were passed by the company altering the priority given by the memorandum to the preference shares and the validity of these resolutions was attacked. It was held by the Court of Appeal that the provisions in the memorandum could not be altered. It was argued that the memorandum could be altered in any respect except as to those matters which the Act requires to be stated therein. But the Court of Appeal held that s. 12 of the 1862 Act was conclusive of the question; that section is now reproduced in effect by s. 4 of the 1929 Act in the following words: "A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Act." The court said that there was no limitation in the section, which was a plain enactment that the company could not alter anything in the memorandum of association which is a condition, save what is expressly mentioned in the Act. And Fry, L.J., said: "I am not prepared to say that there might not be inserted in the memorandum of association details with regard to the management of the company which would not be conditions within the meaning of the twelfth section, but I think that section does apply to all conditions in the memorandum of association which may fairly be described as essential parts of the constitution of the company and upon which it was established. Now was the provision with regard to priority of shares a condition of that description? I think it clearly was, for the distribution of the profits is one of the most essential parts of the constitution of the company."

Another example of the case where rights are unconditionally attached to shares by the memorandum so as to be unalterable (again apart from s. 153) is afforded by *Collins* v. *The Birmingham Breweries Limited*, 15 T.L.R. 180. There the shares were by the memorandum divided into ordinary and preference shares "such shares having attached thereto respectively the rights privileges restrictions and conditions specified in the articles of association of the company with reference to the same." Articles of association defining the rights, privileges and restrictions of the preference shareholders were registered on the same day as the memorandum and must, so the court held, be treated as incorporated in the memorandum. Accordingly they were part of the constitution of the company and could not be altered by the company.

These cases of rights being unconditionally attached by the memorandum to a class of shares furnish us with the answer to one-half of our inquiry, viz., when is a scheme of arrangement necessary as between shareholders? The authority for the proposition that an alteration of such rights can be effected under s. 153 of the Act is to be found in the case of *In re J. A. Nordberg Limited* [1915] 2 Ch. 439.

Equally the cases I have mentioned supply the answer to the second part of our inquiry, for we can say that as a general rule a scheme of arrangement between shareholders, involving the alteration of class rights, will not be necessary where the rights are not the unalterable creation of the memorandum. The well known case of *In re Welsbach Incandescent Gas Light Company Limited* [1904] 1 Ch. 87, illustrates the distinction between class rights unconditionally attached by the memorandum (as in *Ashbury* v. *Watson*, *supra*) and class rights attached by the memorandum, but in a qualified degree. There the memorandum stated that the capital was to be divided into specified numbers of preference, ordinary and deferred shares which were to have specified rights *inter se*: but it further provided that the rights for the time being attached to the several classes of shares respectively might be modified or dealt with in the manner mentioned in the accompanying articles of association. The relevant article provided that the rights and privileges attached to each class might be modified by agreement between the company and any person purporting to contract on behalf of that class provided that such agreement was ratified by a specified majority of the shareholders of that class.

Modifications of the rights attached by the memorandum to the several classes were agreed to and ratified in accordance with the provisions of this article, but it was contended that the conditions of the memorandum relating to the rights attached to the shares were unalterable. The Court of Appeal held that in view of the proviso in the memorandum for the modification of the rights it could not be said that those rights were given unconditionally by the memorandum so as to bring the case within the decision in *Ashbury* v. *Watson*, *supra*. Romer, L.J., said "the rights and privileges of the different classes of shares *inter se* constitute a matter not specially provided for by the legislature. There is no reason why those rights and privileges should not be altered from time to time, or why the alteration should not be duly provided for. Such a provision is not like one concerning the objects of the company or the total amount of its capital. Those matters . . . must be fixed by the memorandum of association; they must be specified in the memorandum of association and cannot afterwards be changed at the will of the company. But there is no legislative provision as to the rights and privileges of the different classes of shareholders *inter se*, and the company may properly provide for any modification of those rights and privileges by either the articles or the memorandum." And Stirling, L.J., said: "The same document which confers a preference on one class of shares contains also provisions which make the rights and privileges of preference shareholders capable of alteration, and, unless it can be established that such a stipulation is forbidden by law, effect must be given to it . . . There is nothing which entitles the court to say that such a clause . . . is forbidden by law."

In the same way it was held in *Underwood* v. *London Music Hall Limited* [1901] 2 Ch. 309, that where the memorandum, after conferring rights on the preference shareholders, went on to provide that any increased capital might be issued on such special conditions as to priority as the company might determine, the company could, on increasing its capital, issue further preference shares ranking *pari passu* with the original preference shares; for the preference shareholders, while having an absolute right as against the original shareholders, were subjected, by the memorandum itself, to the risk of having increased capital placed in front of or alongside them. On the same principle, if in *Collins* v. *The Birmingham Breweries Limited*, *supra*, the rights attached to the shares by the memorandum had been defined, not by relation to the contemporaneous articles, but as such rights as the articles from time to time conferred, those rights could have been modified by appropriate alterations of the articles. And if the rights attaching to a class of shares are conferred by the articles, then alterations can be effected under such an article as clause 3 of Table A, subject in each particular case to any question of *mala fides* or oppression of a minority. It is, as we have seen in the case of class rights being attached by the memorandum with no provision therein for alteration of those rights, that a scheme of arrangement will be necessary in order to effect the desired modification.

A Conveyancer's Diary.

Restrictive Covenants by Purchaser with Himself and Others. L.P.A., s. 82.

A VERY interesting case regarding restrictive covenants and the result of one entering into such covenants with himself and others jointly is reported in the Law Reports for this month—*Ridley* v. *Lee* [1935] 1 Ch. 591.

In 1904 three persons B, H and S, were tenants in common in fee simple of certain land. Before 1906 some parts of the land were sold by the three co-owners to one or other of themselves. In those conveyances no restrictions were imposed. In 1906 the land remaining unsold was offered for sale by auction subject to certain conditions. There was a sale plan attached to the particulars of sale which showed the property laid out in plots which were numbered. One of the conditions provided as follows: "The property or every lot of property is sold and shall be conveyed subject to the following stipulations and every purchaser shall covenant with the vendors their and each of their heirs executors and administrators and assigns owners for the time being of any of the lands now or formerly part of the vendors' estate of which the same form part for the observance thereof and so that every person for the time being entitled to any estate in any such lands shall have a right to the observance and fulfilment of such stipulations so far as they relate to such covenantor's property or lot or lots." Then follow certain stipulations and amongst others that "not more than two dwelling-houses . . . shall be erected on any one plot."

There was a proviso by which the vendors reserved the right as between themselves and any purchaser and the owner or owners for the time being of any part of the estate at any time thereafter to alter, modify, release or dispense with any of the stipulations and to lay out or deal with the estate or any lot or lots not sold in such manner as they or any or either of them should think fit. There was also a proviso to the effect that no purchaser should be personally liable in respect of any breach or non-observance of the covenants after he should have parted with all ownership of his plot or plots.

None of the property offered for sale at the 1906 auction was sold at the auction, but in 1907 B, H and S sold parts of the property to B. The transaction was carried out by two conveyances from B, H and S (the vendors) to B (the purchaser). In each of these conveyances the purchaser covenanted with the vendors "owners for the time being of any of the lands now or formerly part of the vendors' estate of which the said hereditaments form part, and so that every person for the time being entitled to any estate in any such lands shall have a right to the observance and fulfilment of the stipulations" therein referred to and set out in a schedule which were similar to the stipulations in the conditions of sale used at the abortive auction in 1906. There were in the conveyances also provisoes similar to those in the conditions as to the right of the vendors to alter, modify or release or dispense with any of the stipulations so far as regarded the remainder of the estate.

Later, in 1907, H, S and B conveyed to the plaintiff Ridley a further part of the property and the conveyance to him contained similar covenants and provisoes to whose which had been inserted in the conveyance to B.

Before the conveyance to Ridley he and his solicitors were informed that B had purchased a part of the same estate subject to the same restrictions as were to be imposed in respect of the land which the plaintiff was purchasing.

There were various other sales effected by H, S and B of parts of the land retained by them, but none of the conveyances of those lands imposed any restrictive covenants. There was also a sale by B of part of the land which he had bought, and the conveyance on that sale did not refer to or impose any restrictions.

In 1933 B agreed to sell the part of the property purchased by him to the defendant Lee. The agreement contained a statement that the property was or might have been subject to certain stipulations, and provided "the purchaser has notice thereof and shall not make any objection or requisition with regard thereto but the vendor guarantees that these stipulations have ceased to apply to the property sold and in the conveyance to the purchaser the land shall not be conveyed subject to them." The conveyance to the defendant accordingly did not make any mention of the restrictions.

The defendant afterwards proposed to erect four dwelling-houses on one of the plots, and was in course of erecting three of those houses when the plaintiff issued a writ claiming an injunction to restrain the defendant from erecting more than two houses on any one plot in breach of the stipulations referred to.

The first question was whether there was in fact a building scheme, and, assuming that the covenants entered into by B were valid, he and those claiming under him, as well as the plaintiff, could enforce the restrictions in respect of the lands conveyed to B. Luxmoore, J., held that on the assumption aforesaid there was a building scheme, and that the conveyances to B were upon the footing that the restrictions were for the benefit of the other lots intended to be included in the scheme.

It was, however, contended for the defendant that the covenants entered into by B in the conveyances to him were altogether void because they were entered into with himself and others jointly. In this connection the case of *Ellis* v. *Kerr* [1918] 1 Ch. 529, may be referred to.

By a marriage settlement W.W.K. assigned to the trustees a policy of assurance to be held upon the trusts of the settlement, and he, T.D.B. and C.J.K. (two of the trustees) covenanted with the trustees to keep the policy on foot and pay the premiums. A new trustee was afterwards appointed in the place of one who had retired and the policy and the right to enforce the covenant were vested in T.D.B., C.J.K. and E.H.E. (the new trustee) as joint tenants. W.W.K. made default in payment of the premiums and T.D.B. and C.J.K. refused to continue making payments personally. E.H.E. brought an action against W.W.K., T.D.B. and C.J.K., the covenantors, for a declaration that they were jointly and severally liable to pay the premiums and for an order on them to do so. T.D.B. and C.J.K. raised the point that the covenant was void as against them by reason of their being both covenantors and covenantees and asked for a declaration to that effect.

Warrington, J., held that the covenant was void as against T.D.B. and C.J.K.

It was said for the plaintiff in *Ridley* v. *Lee*, however, that any defect in the covenant entered into by B in 1907 had been cured by the provisions of s. 82 of the L.P.A., 1925. That section reads—

> (1) Any covenant, whether express or implied, or agreement entered into by a person with himself and one or more persons shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been entered into with the other person or persons alone.
>
> (2) This section applies to covenants or agreements entered into before or after the commencement of this Act . . . but without prejudice to any order of the court made before such commencement.

It was contended that the effect of that section applied to the facts in the case was to constitute a building scheme in respect of the property purchased by B, even though, in law, such a scheme had no existence at the time of the conveyances of that property.

Luxmoore, J., held, following *Ellis* v. *Kerr*, that the covenants entered into by B in the conveyances to him were void and consequently could not form the basis of a building scheme.

With regard to the contention based upon s. 82 of the L.P.A., 1925, his lordship said that it might be that if H and S were now seeking to enforce the covenants against B they would be entitled to do so by reason of the express provisions of the

section, and that to enable them to do so the covenant would be construed as having been entered into with them alone and not with them and B. The learned judge pointed out that if the covenant had in the first place been entered into between B on the one hand and H and S on the other, it would not have enured for the benefit of the whole of the interest in the land retained, because H and S were only two out of three tenants in common, and covenants in such form would not have created that mutuality of obligation which is the essential ingredient for the enforcement of a building scheme by one purchaser from the common vendors against another purchaser from them, as laid down in the well-known case of *Elliston* v. *Reacher* [1908] 2 Ch. 374. Consequently, s. 82 of the L.P.A. did not avail the plaintiff.

The action was dismissed.

It may be permissible to point out that if the plaintiff was relying upon the covenants being enforceable and had looked more fully into the matter before completing, he would have ascertained that the covenants entered into by B were not enforceable (or, at any rate, that there was a doubt on the point), and that being so, that he would or might not be in a position to restrain any breach affecting the property which he was purchasing.

Landlord and Tenant Notebook.

Weekly Tenancies and Compensation for Goodwill.

THOUSANDS of small shops are let on weekly tenancies, for the simple reason that the parties never considered the question of the term, and never thought of rent being payable at any interval other than once a week. Can their tenants qualify for compensation for goodwill, or for a new lease in lieu of such compensation, under Pt. I of L.T.A., 1927 ?

The landlord can of course very easily prevent such a tenant from so qualifying, by giving notice to quit and re-letting once in every five years ; the tenant's title thereby becomes a new one. But I am dealing with what happens in practice, and considering the position of people who do not consult solicitors when negotiating tenancies but are apt to resort to legal advice when a notice to quit does not suit them. At all events, will academic and sceptical readers please note that this article is inspired by a case from real life.

I do not know whether the legislature bestowed much thought on the matter when passing the statute. In the case of the Agricultural Holdings Act, 1923, tenancies for less than two years are excluded from its operation (s. 57, (1)). But as regards the intention of the L.T.A., 1927, whatever Parliament meant at the time, there is some evidence that more recently it has approved the idea of " the little man " sharing its benefits ; for the decontrolling provision (Class " A ") of the 1933 Rent, etc., Act (s. 1 (6)), expressly saved the rights of those entitled to compensation or new leases, under Pt. I of L.T.A., 1927, and many of these must have been weekly, if statutory, tenants.

However, to test the position of an ordinary weekly tenant : the first requirement is that he should, in the words of s. 4 (1), be " the tenant of a holding to which this Part of this Act applies." This takes us to s. 17 (1), by which " the holdings to which this Part of this Act applies are any premises held under a lease, other than a mining lease . . . used wholly or partly for carrying on thereat any trade or business, and not being an agricultural holding . . . " ; and to s. 25 (1), providing that " for the purposes of this Act, unless the context otherwise requires, the expression ' lease ' means a ' lease, underlease, or other tenancy ' . . . " As to " tenant " the same sub-section for the same purposes defines him as " any person entitled in possession to the holding under any contract of tenancy, whether the interest of such tenancy was acquired by original contract, assignment, operation of law or otherwise."

Now, to revert to s. 4 (1). The tenant of a holding to which this part of this Act applies, as we were saying, " shall, if a claim for the purpose is made in the prescribed manner (i) in the case of a tenancy terminated by notice, within one month after the service of the notice on the tenant," be entitled, under certain conditions, to compensation for goodwill.

There is nothing in the context to exclude a weekly tenant from the operation of this provision, nor is the prescribed manner one which he cannot follow. It may be that he would be well advised to set about making his claim before the expiration of his notice to quit, to avoid any argument—not that such an argument would succeed—that being no longer entitled to possession he would no longer answer to the description of " tenant " and his claim was therefore a nullity.

What about a claim for a new lease ? Here, I think, theory and practice must be more carefully distinguished. I do not doubt that a weekly tenant can acquire the necessary qualifications ; not only that of having added goodwill, but that of inadequacy of monetary compensation, as set out in s. 5 (1). He may also comply with s. 5 (2), which gives him two months within which to start proceedings. And he may run round to the local county court and ask for an interim order entitling him to retain possession, on such terms as the court thinks proper, pending the hearing of his claim (s. 5 (13)). But—here's the rub—the power of the tribunal when dealing with the claim, extends, on the one hand, to the ordering of a fourteen-year term ; but, on the other hand, it is qualified by the important phrase " if it considers that the grant of a new tenancy is in all the circumstances reasonable."

A landlord, though he would have to confess ignorance or apathy to explain why he did not determine the tenancy before the qualifying period of five years elapsed, would probably have little difficulty in persuading the tribunal that the grant applied for was not reasonable, and I would go as far as to say that the landlord of business premises, let on a weekly tenancy, can probably safely let them to someone else as from a date after the expiration of a notice to quit given or to be given. It is most unlikely that the new tenant should entertain fear of disturbance, for an attempt of the old tenant to make good a claim for a new lease in lieu of monetary compensation would be on the same footing as an action for specific performance by an intending tenant against a landlord who has in the meantime granted a lease to a third party. *Willmott* v. *Barber* (1880), 15 Ch. D. 96, if not directly in point, is the leading authority for the proposition that in such circumstances the relief must be refused ; the claim was for specific performance of an unconditional contract to assign a lease, which, it transpired, could not be assigned without the lessor's consent, which was not forthcoming. Another case which might play a part in such a problem is *Deverell* v. *Milne* (1918), 34 T.L.R. 576, when the court refused an injunction asked for by the intended " tenant " of a house-boat, to prevent the intended " landlord " from " letting " the vessel to anyone else ; which she had already done.

Our County Court Letter.

NOISE FROM DOG KENNELS.

IN *Booth* v. *Lillingston*, recently heard at Leicester County Court, the claim was for an injunction to restrain a nuisance, viz., the barking of fox hounds. The evidence was that the North Atherstone hounds had been moved (on the 16th May) to a farm 255 yards from the house of the plaintiff. Punctually at 11.30 p.m., 3.30 a.m. and 5.30 a.m. there occurred noises of three types, viz., barking, howling and " singing." The plaintiff had thereby been prevented from having a good night's rest, and (by reason of insomnia) had been given

sleeping draughts by his doctor. The house of the plaintiff had been rendered unsaleable, as a private residence, owing to the proximity of the kennels. Corroborative evidence was given by three neighbouring householders. Evidence for the defendant (the joint master) was given by the Master of the Cottesmore, to the effect that hounds were usually quiet at night, as shown by the fact that they were usually kennelled in villages, such as Broadway. The hounds in question were in a scattered district, and a resident, living 243 yards from the kennels, stated that he had not been disturbed—although apprehensive when the kennels were first moved. His Honour Judge Haydon, K.C., having inspected the kennels, observed that the plaintiff was a nervous man, who anticipated trouble, but had not established that there was a nuisance. Judgment was therefore given for the defendant, with costs.

THE DISCHARGE OF RAIN WATER FROM EAVES.

In a recent case at Ipswich County Court (*Shepherd* v. *Shackleton*) the claim was for £5 damages, and an injunction to restrain the user of a garage, so as to be a nuisance to a coalyard. The plaintiff's case was that his premises were separated from those of the defendant by a close-boarded fence. In 1929 the defendant had built a garage, but the roof had no guttering and no down-pipe. The water was therefore discharged on to the plaintiff's land, and damaged the fence. In 1931 the defendant laid a concrete yard, for washing cars, and the overflow became worse, as the horizontal pipe (leading to the road) was inadequate. The defendant's case was that the plaintiff had only had a coal yard for two years, prior to which he had kept ducks and pigs, in respect of which he had been ordered to abate a nuisance. The fence was eleven years old, and, although the garage had been erected in 1927, no complaint was received until 1934. There had been no complaint from the corporation as to a breach of the bye-laws, e.g., by the absence of guttering. His Honour Judge Hildesley, K.C., gave judgment for the defendant, with costs. Compare a previous case, noted under the above title, in the "County Court Letter" in our issue of the 8th June, 1935 (79 Sol. J. 416).

THE REMUNERATION OF WELL SINKERS.

In a recent case at Cheltenham County Court (*Baker* v. *Harrison and Wife*) the claim was for £46 1s. as the cost of sinking a well near the Fish Inn, Broadway. The plaintiff's case was that he had quoted the usual price per foot, i.e., the charge increased as the depth got lower. A condition was that he should be paid two-thirds of the cost as the work proceeded. From January to April a depth was reached of 28 feet, but difficulty was caused by unexpected quantities of rock, which had to be blown out of the shaft. On being asked for a payment on account, however, the defendants repudiated liability until they saw the water. The plaintiff was told to abandon the work, but he contended that he had neither guaranteed to find water nor to provide a brick lining for the well. The defendants' case was that, having been told of the presence of water (by a water diviner) at 22 feet, they employed the plaintiff, who had quoted for a depth of 60 feet. Nothing was said about payment on account, and the well had collapsed twice. His Honour Judge Kennedy, K.C., held that, by refusing the reasonable request for a payment on account, the defendants had broken the contract. Judgment was given for the plaintiff, with costs.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

INJURY TO COAL-CUTTER.

In *Keegan* v. *Ellistown Collieries Limited*, at Ashby-de-la-Zouch County Court, the applicant's case was that, on the 22nd February, 1934 (while working as a coal-cutter), he sustained a compound fracture of the left fore-arm through a fall of coal. Compensation was paid to the 9th January, 1935, when the applicant was offered work as a patrol man, but this required the use of two hands, and the applicant (being unable to do the work) was dismissed. The respondents' case was that the dismissal was due to the applicant having been found asleep on duty, which was a breach of the coal mines regulations. He had since been paid compensation, on the basis of partial incapacity, but the respondents were prepared to re-engage him as a patrol-man—thinking his suspension had been a sufficient punishment and would also be a deterrent. After a discussion, a request was made for the case to be treated as an application to redeem, respondents to pay £450 (with costs on Scale B) and to employ the applicant as patrol-man—subject to his good behaviour, good timekeeping, the exigencies of trade, and his undertaking to observe the rules and regulations of the colliery. His Honour Judge Haydon, K.C., made an award accordingly, and made a note of the undertaking, although it formed no part of the award.

ACCIDENT TO CARRIER-TRICYCLIST.

In *Eldorado Icecream Co. Ltd.* v. *Lavender*, at Bristol County Court, an application was made for a review. On the 22nd September, 1934, the respondent had been a driver-inspector, when his elbow was injured in a collision. He continued to receive his full wages, viz., £3 10s. a week, but he slipped and injured the same elbow on the 9th October. Thereafter he had received full compensation, viz., 30s. a week, but the applicants were prepared to re-employ the respondent as a depot charge-hand, at 55s. a week. The respondent's medical evidence was that, although movement would improve the injured arm, he should not use a carrier cycle. His Honour Judge Parsons, K.C., sitting with a medical assessor, held that the respondent was not fit to ride a bicycle or tricycle. On the applicants undertaking to find some other employment (involving no lifting of heavy weights, with the injured arm) at 35s. a week—an order was made for reduction of compensation to 17s. 6d. a week, each side to pay their own costs.

CEREBRAL HEMORRHAGE AS AN ACCIDENT.

In *Carr* v. *Pease and Partners, Ltd.*, at Thorne County Court, an award was claimed by a cripple, as a dependent upon his deceased brother. The latter had been working in Thorne Colliery, where the coal was hard and difficult, and one of his mates heard him exclaim: "Oh, my head!" There was a thud, and the deceased was found lying in the road, death being due to cerebral hemorrhage. The respondents denied that death was due to an accident, arising out of the employment, as the deceased had an aneurism of the brain, and might have died at any time, even away from work. His Honour Judge Sir Reginald Mitchell Banks, K.C., in a reserved judgment, found as a fact that death took place while the deceased was at work (viz., getting coal with the pick) when the accident occurred. The work helped materially to cause the rupture, and substantially the deceased died from a combination of the disease and the employment. An award was made of £120 and costs.

REFUSAL TO UNDERGO OPERATION.

In *Bailey* v. *Ynysmardy Colliery Co.*, at Bridgend County Court, an application was made for the continuation of compensation, which had been paid up to February, 1935. The applicant's case (supported by medical evidence) was that he had a reasonable objection to undergoing an operation for hernia, as his brother had died under an anæsthetic twenty-three years ago. The respondents' case was that the proposed operation was trifling, compared with one for abscess on brain, which was the cause of the brother's death. His Honour Judge Clark Williams (sitting with a medical assessor) held that the objection was unreasonable. In the ordinary course, if the applicant had undergone an operation, he would have recovered by the 31st March. An order was made for the compensation to be continued to that date, but to cease thereafter.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Land of Railway Company.

Q. 3196. Under the proviso to s. 64 of the Housing Act, 1925, the Minister of Health may not authorise the purchase compulsorily of land which has been acquired by any company for the purposes of a railway, dock, canal, water, or other public undertaking. I am in doubt as to the extent of this proviso under the following circumstances: By an Act of some thirty years ago a railway company obtained power to widen its line through the town of X, and actually widened the line on the east of X. On the west of X the company acquired cottages for the purposes of the Act, and by the Act the company were to buy land elsewhere to accommodate the occupiers of these cottages. The company, in fact, purchased a plot of land which is surrounded on three sides by land belonging to A and B. The land belonging to A and B has, in two places, as has the company's land, a frontage to a public road. Recently the greater part of the cottages have been closed under orders made by the local authority of X, who are now seeking to buy the land of A and B, but not the land of the railway company (still not built upon) for re-housing purposes. The railway company have not widened the line on the west of X and are not inclined to do so. My doubts are, as I have stated above, as to what extent the railway company have protection under the proviso referred to, as I cannot see that the land they acquired for re-housing has been acquired by them for the purpose of a railway, or an undertaking. I have referred to the decision in *Coole* v. *Lovegrove*, 62 L.J., M.C. 153, for assistance, but I shall be glad if you will suggest whether the words "purposes" or "undertaking" would include any activity or obligation imposed upon a railway company.

A. The questioner is correct in his opinion that the land for re-housing was not acquired for the purpose of a railway. The words "purposes" or "undertaking" do not include any activity or obligation undertaken by or imposed upon a railway company. The case appears to be governed by the principle enunciated by Mr. Justice Kennedy in the case quoted.

Directors of Statutory Company.

Q. 3197. An Act of 1839 united certain persons into a company declared to be one body politic and corporate with perpetual succession and a common seal, and it was enacted that these persons, who were therein named, and their successors, to be appointed as therein mentioned, should be a committee of directors for managing the affairs and business of the company and that these directors should continue in office until the January following, and it was further enacted that in the January following, and at the annual general meeting which should be held in the month of January in every succeeding third year, nine of the proprietors of shares in the company, qualified as therein mentioned, should be elected a committee of directors in the place of the former committee. The Act contains no provision enabling a member of the committee to resign his office, but it is provided that if he cease to be the proprietor of five shares he shall thereupon cease to act or vote at such committee and shall cease to be a member thereof. My reading of the Act is that whatever the events are which may happen, the whole of the committee has to be re-elected every third year, but for some years past the company has had resignations and deaths, and between the notice calling the last annual meeting and the holding of the meeting the chairman of the directors sent in his resignation. There has not been an election of a complete nine as a committee of directors for several years. There is no penalty in the Act for an improperly constituted committee. I shall be glad to have your opinion and assistance as to whether (*a*) a director can resign by merely sending in his resignation, and (*b*) if the existing committee of directors is wrongly constituted, how may matters be set right?

A. The opinion is given that—

(*a*) A director cannot resign by merely sending in his resignation. It must be tendered and accepted at a corporate meeting duly convened. See "Grant on Corporations," at p. 268.

(*b*) If the existing committee of directors is wrongly constituted, the matter may only be set right by passing a resolution of ratification and indemnity at the next triennial general meeting.

Liability of Executrix.

Q. 3198. A supplies goods to a shop, which trades as "Blank & Son," there being nothing else on the firm note-paper, etc., to indicate who are the proprietors. A has not done business with this firm before and is ignorant as to its constitution. The shop shuts down, leaving A's account unpaid. On further inquiry then being made, it is disclosed that the business belonged to a certain man who died about two years ago, and that the business had been carried on by his widow as his executrix, and that the business had been closed down owing to its failure to pay. A has sued this widow in her own name adding the words ("lately trading as Blank & Son"). The defence raised is that the defendant was carrying on business as executrix, and she is not personally liable. The estate is said to be hopelessly insolvent, so that if we have to rely upon a claim against the estate it is worthless. It seems to us that if A, acting in good faith, gave credit to a certain firm or person he is not concerned as to what manner that firm or person was carrying on and has a good claim against that firm or person, personally, and the executrix is only entitled to rely upon an indemnity from the estate which she is administering. Do you agree with this?

A. The opinion is given that the shopkeeper pledged her own credit, and is therefore personally liable for the goods. The views advanced by the questioner are therefore correct.

Liability for Road Widening.

Q. 3199. A is the owner of land adjoining a road which has been taken over by the local authority. He now proposes to build a dwelling-house on the land, and has been informed by the local authority that the road in question is scheduled for widening and that land on A's side will ultimately be required for this purpose.

A is therefore setting his house well back from the present road, but information is desired as to (*a*) the power of the local authority to acquire A's land, and (*b*) whether after the land has been taken over by the local authority A will be responsible for the cost of the new roadworks as a frontager or otherwise.

A. (*a*) The power of the local authority to acquire A's land probably arises under a local town planning scheme.

(*b*) A will not be responsible for the cost of the new roadworks as a frontage or otherwise.

To-day and Yesterday.

Legal Calendar.

5 August.—On the 5th August, 1847, the body of Daniel O'Connell, Ireland's greatest advocate, was buried in a vault in Glasnevin cemetery, followed to the grave by 50,000 people, vying with one another in a sad species of enthusiasm in paying homage to the memory of their beloved leader. Sackville Street was filled with a sea of human beings, and the vessels in the Liffey lowered their flags and manned their yards as the procession passed. The Lord Chancellor, the Lord Mayor, the clergy, magistracy and gentry all participated in the most magnificent funeral that Dublin had ever witnessed. The procession from the chapel in Marlborough Street, where the body had lain, was a mile and a half long.

6 August.—Most painful scenes marked the trial of Matthew Francis on the 6th August, 1859, at the Newport Assizes, on a charge of murdering his wife, whom he had killed in a fit of violence. Early in the proceedings he fell forward on the bar, exclaiming "Oh, my dear! my dear!" Stimulants were administered and a chair allowed, but soon he fell down again in a fit and had to be removed from court. The proceedings were suspended for an hour, after which he was again brought in, but his moans during the remainder of the trial were most distressing. He was found guilty and condemned to death, but the sentence was not carried out as there was a doubt as to his sanity.

7 August.—On the 7th August, 1889, Mr. Justice Stephen, sitting at the Liverpool Assizes, sentenced Mrs. Maybrick to death for the murder of her husband. Although the jury had considered their verdict for only thirty-five minutes, public opinion considered that the facts demanded an acquittal. The spirit of compromise, therefore, demanded that she should be reprieved, but kept in penal servitude for fifteen years, despite the strenuous efforts of her counsel, Charles Russell, both before and after he became Lord Chief Justice, to secure her release.

8 August.—On the 8th August, 1814, William Pollard, a boy of fourteen, was found guilty at the Cambridge Assizes of setting fire to a house at Sawston. To spite his uncle, who had reprimanded him for idleness, he had placed a piece of burning turf close to the thatch. Later, seeing some one else suspected, he had confessed. As the law then stood, he was sentenced to be hanged, but he was immediately reprieved.

9 August.—On the 9th August, 1828, William Corder was sentenced to death at the Bury St. Edmunds Assizes for the murder of Maria Marten.

10 August.—The Thornbury murder case, tried before Mr. Justice Shee at the Gloucester Assizes on the 10th August, 1864, had some unusual features. The prisoner, Louis Gough, a man of fifty-five, was charged with killing Mary Curtboys, a blind widow. Jealousy of a gamekeeper to whom she had shown some favour, abandoning the prisoner, had been the motive. She had ordered him out of her garden, and in his anger he had struck her down with a hammer and cut her throat. He was found guilty and sentenced to death.

11 August.—On the 11th August, 1486, William Waynfleet, Bishop of Winchester, died suddenly after a life of uninterrupted health. He had held the Great Seal as Chancellor for four years, from 1456 to 1460, a disastrous period of civil war and ruin, and had surrendered it to Henry VI three days before the fatal battle of Northampton sealed the fate of the Lancastrian line. The unfortunate king bore ample testimony to "the bishop's innocence, his meritorious service and unblemished reputation."

The Week's Personality.

"Matrimony. A Private Gentleman, aged 24, entirely independent, whose disposition is not to be exceeded, has lately lost the chief of his family by the hand of Providence . . . Should this meet the eye of any agreeable lady who feels desirous of meeting with a sociable, tender, kind and sympathetic companion, they will find this advertisement worthy of notice." William Corder, the young Suffolk farmer, who inserted this advertisement in the *Sunday Times*, had six months earlier killed and buried a girl whose parents were forcing him into matrimony. This was the tragedy of Maria Marten or The Murder in the Red Barn. His own description of himself is hardly further removed from the truth than the "blend of Adonis and Beelzebub" often presented on the stage. Actually he was a rather stout young man of twenty-four who looked thirty. He had a corrupt heart and in the dock he behaved like a coward. While sentence of death was being passed, his cries of misery almost drowned the voice of Chief Baron Alexander, and he had to be practically carried from the court. Two days later he was hanged, having confessed his crime. The day before the execution a peripatetic nonconformist preacher emphasised the moral of the tale in an impassioned discourse at the Red Barn itself, delivered to a congregation numbering 5,000.

Coming to the Front.

In the Court of Appeal recently there was seen the unusual spectacle of a junior counsel occupying the front row sacred to "silks," a concession to his voice, which had been affected by the hot weather. Such premature advancement should be a good omen for the future. It was at any rate in the case of Lord O'Brien of Kilfenora, famous as Chief Justice of Ireland. Immediately after he was called to the Bar, he had to make some very simple application to the court, but so flustered was he that he rose to speak from within the Bar, and, once on his legs, the power of speech deserted him. "Who is this?" growled the judge. "And what does he want?" "I don't know who he is or what he wants," replied the registrar, and coming forward he snatched the brief from the petrified barrister to see whether there was any mistake. "It's all right, you can go on," he said when formality was satisfied, adding in an undertone: "You ought to get on, called to the Bar and talking silk both on the same day." And get on he did.

Fairness to Prisoners.

To his recent timely strictures on the neglect of the duty of prosecuting counsel to be fair to prisoners, the Lord Chief Justice might well have added a reminder that fairness may be also the best policy. One recalls a story of the great Hawkins defending at Quarter Sessions a man charged with felony. Bail had been granted on an application to Mr. Baron Martin, and the solicitor's instructions were that he had said there was not a rag of a case. Hawkins was young then and believed it, but Rodwell, the prosecuting counsel, to whom he spoke before the trial, bumptiously insisted that what the Baron said was not evidence. Nevertheless, in cross-examining the police witness, Hawkins asked him whether the Baron had not made this remark. His opponent indignantly objected, and the chairman, the Marquis of Salisbury, upheld the objection. Hawkins now had a grievance with the jury and played round the question as one longing for forbidden fruit. Rodwell's indignant mutterings and objections only gained his young opponent the sympathy even of the Bench, and finally, there was an acquittal. The case being over, the Marquis recalled the policeman to find out what the Baron really did say. "My lord," said the witness, "he said he looked upon the whole lot as a gang of thieves." So Rodwell's objection, correct though it was, had lost him the case.

Land and Estate Topics.

By J. A. MORAN.

THE closing weeks of the summer sale season for the disposal of real property at auction were marked this year with an activity that proved, beyond doubt, the return of better times. At the Auction Mart, Queen Victoria Street, this was very much in evidence. The sure foundation on which the revival of trade rests exercises a large influence; but I am inclined to think that the strength of the market is due largely to the discovery of investors that in their search for good yields and big profits in other directions they had overlooked the opportunities afforded by real estate. Belated recognition of this fact will be none the less welcome to auctioneers, even if busier conditions involve curtailment of holiday tours.

The changes in the law relating to auctioneers, recommended by a Select Committee of the House of Lords, are not likely to set Lincoln's Inn Fields on fire. A few threads of the Committee's considered opinions may hold good, but the chief suggestion is not likely to commend itself to any auctioneer in the whole Kingdom. There is a sincere desire to rid the profession of rogues who intend to rob a credulous public, after exchanging a ten pound note for a licence; but if this is only to be accomplished by adopting the police court procedure that plays an important part in the granting of licences to pawnbrokers and moneylenders, the less said about it the better.

Sir Kingsley Wood, Minister for Health, told a deputation from the National Federation of Building Trades Operatives recently that he was giving close attention to a scheme of the Employers' Federation to restrict "jerry-building." This is something in the nature of an advance; but, probably, before the Minister makes up his mind, the jerry-builder will have done his worst.

Mr. B. W. Adkin had a pleasing duty to perform when he spoke at the annual prize-giving at the College of Estate Management, Lincoln's Inn Fields. As principal of this comparatively new and successful centre, he has many successes to his credit, but this year he and his assistants appear to have done better than ever. "During the period in which I have been teaching," he said, at the annual gathering, "students here have taken over 37,000 courses of instruction." And further, "As a means to success at examinations, the courses of preparation have proved effective as is shown by the fact that a far greater number of college students are successful at their examinations than those who acquire their knowledge by other means. Since I have been teaching, our students have obtained over 300 medals and prizes."

This, undoubtedly, is a great record which is likely to improve. The old "coach" as I knew him, was dependent on his own resources, but the College has a host of professors and authorities to give advice and assistance to its students.

When will some auctioneers realise that long-windedness, indulged in when introducing a property for sale, is damaging to the owner's interests? There is nothing that damps interest in a public sale more than boredom. I remember a country auctioneer who, after a long palaver, expressed the hope that he had not taken up too much time? "No," said a voice at the door "it's still raining."

An appeal to the Government to pass legislation that would allow property owners to have compensation for damage done by mining subsidences has just been made by the National Federation of Property Owners and Ratepayers at their summer meeting, which, as a matter of course, was held at a pleasure resort. This followed a previous demand for legislation giving the right of surface support and compensation for damage, as well as easier and cheaper facilities for litigation in cases of dispute.

The late Mr. Trollope, head of the well-known firm of Messrs. George Trollope & Sons, was of a retiring disposition, but he took a keen interest in everything that concerned the welfare of his profession. He travelled all over the world, and served for many years on the town council of New Romney, Kent. He also took a large interest in local affairs.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

De-Control and the Rent Restrictions Acts.

Sir,—Referring to the article appearing on p. 533, Vol. 79, of your journal, dealing with the recent case of *Pearman* v. *Dyer*, I find it difficult to understand on what grounds the landlord became entitled to an excuse certificate under s. 2 (2) of the Act of 1933, as in view of the fact that the landlord did not come into possession of the premises until September, 1933, he could not claim that, by virtue of the provisions of s. 2 of the Act of 1923, the principal Acts had ceased to apply to the dwelling-house before the passing of the 1933 Act, i.e., the 18th July, 1933, nor, according to the reported facts, was the ground floor let as a separate dwelling immediately prior to that date.

Chesterfield, 1st August. FRED D. WORTHINGTON.

[We have submitted our correspondent's letter to the contributor of the article, and the following is his reply:—"The full facts were that the statutory tenant vacated on the 25th June, 1933, but left a protected sub-tenant on the first floor. A fortnight later the sub-tenant moved to the ground floor, and the landlord thus came into possession of the first floor. Hence, in June, the landlord became entitled to the benefit of s. 2 (1) of the 1923 Act. In September, 1933, and June, 1934, the landlord again got possession of the whole premises. The difficulties in the plaintiff's way were non-registration and the apportionment order. The first was surmounted by the excuse certificate and registration in accordance with the Act, thus leaving the point of the case which was whether the certificate wiped out the effect of the apportionment or whether the apportionment made it impossible to give effect to the registration."—ED. *Sol. J.*]

Obituary.

COLONEL HIS HONOUR HANS HAMILTON.

Colonel His Honour Henry Best Hans Hamilton, J.P., died at Cranley-gardens, S.W., on Monday, 5th August, at the age of eighty-four. Educated at Durham School, he was called to the Bar by the Inner Temple in 1873 and went the North-Eastern Circuit. He contested as a Conservative the Borough of South Shields in 1880. He was Recorder of Berwick-upon-Tweed from 1899 to 1905, when he was appointed Judge of the County Courts on Circuit 4 (Lancashire). He retired in 1913 on account of ill-health. His Honour Hans Hamilton was joint author of a digest of the laws relating to the management and rating of collieries, and he also edited articles for Lord Halsbury's "Laws of England." He became an hon. life member of the Surveyors' Institution in 1905.

SIR D. WARMINGTON.

Sir Marshall Denham Warmington, Bt., of Essex-court, Temple, a Registrar in the High Court of Justice in Bankruptcy since 1926, died on Friday, 2nd August, at the age of sixty-three. He was educated at Trinity College, Cambridge, and in 1895 he was called to the Bar by the Middle Temple. His father, Sir Cornelius Marshall Warmington, K.C., was created a baronet in July, 1908, and Sir Denham succeeded him as second baronet in December of that year.

MR. E. G. JELLICOE.

Mr. Edwin George Jellicoe, barrister-at-law, of the League of Nations Bureau, Geneva, died at Wembley on Sunday, 4th August. Mr. Jellicoe was called to the Bar by Gray's Inn in 1904.

MR. P. BENNETT.

Mr. Patrick Bennett, solicitor, a partner in the firm of Messrs. Patrick Bennett & Maddison, of Newcastle-upon-Tyne, died on Thursday, 1st August, at the age of fifty-five. He served his articles with the late Mr. Tom Lambert, a former Magistrate's Clerk for Gateshead, and was admitted a solicitor in 1909. He practised on his own account for a few months and then entered into partnership with Mr. W. Maddison. Mr. Bennett was an Alderman of Durham County Council.

MR. W. J. MASTERS.

Mr. William John Masters, solicitor, of Swindon, died on Tuesday, 6th August, in his sixty-second year. Mr. Masters, who was admitted a solicitor in 1898, was a partner in the firm of Messrs. Morrison & Masters, of Swindon. He was Treasurer of the local Conservative Association.

MR. H. G. WESTLEY.

Mr. Herbert George Westley, M.A., LL.B., Cantab., solicitor, of Queen Anne's Gate-buildings, S.W., and Golders Green, died on Sunday, 4th August. Mr. Westley was admitted a solicitor in 1901.

Reviews.

The Coroner's Officer's Guide. By ARTHUR H. NEVE, Solicitor, H.M. Coroner for Kent. 1935. Crown 8vo. pp. (with Index) 124. Tonbridge: Tonbridge Free Press, Ltd. 3s. 6d. net.

The object of this serviceable little volume is to provide a guide for coroners' officers and especially also for police recruits and police sergeants who have young recruits to train. The Coroners (Amendment) Act, 1926, has made a great deal of difference both in the coroner's own work and that of his officer. This work deals with all procedure preliminary to and in connection with an inquest, and contains a brief epitome of the law and practice relative to treasure trove. Altogether a handbook that should prove extremely useful to all for whom it is intended.

Books Received.

Air Raid Precautions Handbook No. 2. Anti-Gas Precautions and First Aid for Air Raid Casualties. 1935. London: H.M. Stationery Office. 6d. net.

Law and Practice of Hall-Marking Gold and Silver Wares. By J. PAUL DE CASTRO, of Lincoln's Inn and the Western Circuit. Second Edition Enlarged. 1935. Royal 8vo. pp. xxxvii, and (with Index) 372. London: The Technical Press, Ltd. 21s. net.

Let's Halt Awhile in and around Kent, Surrey & Sussex. By ASHLEY R. COURTENAY. Vol. I. Second Edition. Revised and Enlarged. 1935. London: Ashley Courtenay, Ltd. 1s. net.

The Law and Custom of the Constitution. By Sir WILLIAM R. ANSON, Bart., D.C.L., of the Inner Temple, Barrister-at-Law, Warden of All Souls College, Oxford. Volume II. The Crown. In Two Parts. Fourth Edition. 1935. By A. BERRIEDALE KEITH, D.C.L., D.Litt., of the Inner Temple, Barrister-at-Law, Advocate of the Scottish Bar. Demy 8vo. Part I, pp. xxxi and 325. Part II, pp. xv and (with Index) 414. London and Oxford: Humphrey Milford, Oxford University Press. 30s. net.

Notes of Cases.

Court of Appeal.

Cohen *v.* Donegal Tweed Co. Ltd.

Lord Hanworth, M.R., Maugham, L.J. and Luxmoore, J. 24th July, 1935.

LANDLORD AND TENANT—BREACHES OF COVENANT—ISSUE OF WRIT BY LESSOR—CLAIM FOR DECLARATION OF TITLE TO POSSESSION AND DAMAGES—TERMINATION OF LEASE.

Appeal from the Chancery of Lancaster (79 SOL. J. 343).

The plaintiffs, as executors of a testator who had leased a shop to the predecessors of the defendants, claimed by writ and statement of claim a declaration that they were entitled to possession of the demised premises or forfeiture and damages for breach of covenant, but did not claim an order for possession. The lease contained covenants to repair and a proviso that on breach of covenant it should be lawful for the landlord to re-enter and thereupon the demise should determine. Breaches of covenant were admitted. The defendants counter-claimed that the claims in the writ had determined the lease at the date of the issue of the writ. The plaintiff contended that as they had not asked for possession, but only a declaration that they were entitled to possession, the lease had not determined. Sir Courthope Wilson, K.C., V.-C., held that the lease had determined on the issue of the writ. The plaintiffs appealed.

LORD HANWORTH, M.R., dismissing the appeal, said that *Moore* v. *Ulcoats Mining Co. Ltd* [1908] 1 Ch. 575, was a very different case from the present. In *Jones* v. *Carter*, 15 M. & W. 718, Parke, B., said: "The lease would be rendered invalid by some unequivocal act indicating the intention of the lessor to avail himself of the option given to him and notified to the lessee, after which he could no longer consider himself bound to perform the other covenants of the lease; and if once rendered void, it could not again be set up." (See also *Grimwood* v. *Moss*, L.R. 7 C.P. 360). The question was whether there was here such an unequivocal act. Under R.S.C. ord. 25, r. 5, the court might make binding declarations of right whether or not consequential relief was asked for. It had been argued that as a declaration only was asked for, it was still open to the landlords to elect whether they would go into possession or not. The effect was that the defendants were no longer entitled to possession. The claim for a declaration "was a convenient method of ascertaining the legal position of the parties" (*Gray* v. *Spyer* [1922] 2 Ch. 22 at p. 27). The plaintiffs could not get rid of the issue of the writ, which was an unequivocal act, giving rise to forfeiture.

MAUGHAM, L.J., and LUXMOORE, J., agreed.

COUNSEL: *Blease; Edward Ackroyd.*

SOLICITORS: *North, Kirk & Co.*, of Liverpool; *Layton & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

H.M. Postmaster-General *v.* Birmingham Corporation.

Slesser and Roche, L.JJ., and Swift, J. 25th and 26th July, 1935.

LOCAL GOVERNMENT—TOWN PLANNING SCHEME—POWERS OF CORPORATION—ALTERATIONS TO STREETS—NECESSARY ALTERATION TO TELEGRAPHIC LINES—EXPENSE—LIABILITY—HOUSING, TOWN PLANNING, ETC., ACT, 1909 (9 Edw. 7 c. 44)—HOUSING, TOWN PLANNING, ETC., ACT, 1919 (9 & 10 Geo. 5, c. 35)—TELEGRAPH ACT, 1863 (26 & 27 Vict. c. 112) s. 15—TELEGRAPH ACT, 1878 (41 & 42 Vict. c. 76) s. 7.

Appeal from a decision of Goddard, J. (78 SOL. J. 840).

Under a town planning scheme undertaken by the Birmingham Corporation, the construction of new streets, the widening of old streets and certain alterations of levels were necessary. This entailed the alteration of telegraphic lines, and the liability for the cost of this was the matter in dispute. To avoid delay it was agreed that the plaintiff should do the work,

the defendants undertaking to pay the expenses, unless they could establish their right to call on the plaintiff to carry out the alterations at his own expense. The work was done, and Goddard, J., on a special case set down under Ord. XXV, gave judgment for the defendants.

SLESSER, L.J., dismissing the appeal, said that these works were executed under the Housing and Town Planning Acts, 1909 and 1919, though the corporation had power under other statutes. The plaintiff relied on s. 15 of the Telegraph Act, 1878, and the defendants on s. 7 of the Telegraph Act, 1863. The corporation were a body having "the control of any street or public road" and had resolved "to alter the line or level of any portion of such street or road" within that section under the Housing Acts. They were, therefore, authorised by statute and could exclude themselves from the operation of s. 7 of the Act of 1878, falling within s. 15 of the Act of 1863.

Roche L.J., and Swift, J., agreed.

COUNSEL: *The Attorney-General* (Sir Thomas Inskip, K.C.) and *H. Murphy*; *W. E. T. Jones*, K.C., and *Eve*, K.C.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Ebbw Vale Steel, Iron & Coal Co. *v.* Tew; Same *v.* Richards; Same *v.* Lewis.

Slesser and Roche, L.JJ., and Swift, J.
24th and 25th July, 1935.

DAMAGES—MINERS—BREACH OF CONTRACT—STOPPAGE OF WORK—MEASURE OF DAMAGES.

Appeal from Tredegar County Court.

The defendants were miners employed by the company. On certain days in September and October, 1934, they and a number of other men ceased work. It was suggested by them that work in a certain area had become so difficult that they were justified in ceasing to do it. A further stoppage occurred after a fatal accident, when the men claimed to be entitled by custom to leave work automatically. In an action by the employers for damages for breach of contract, His Honour Judge L. C. Thomas held that there was a breach of contract, and adopted the measure of damages contended for by the plaintiffs, namely, the workman's aliquot share of certain overhead expenses, without regard to the extent to which the share would or would not have been recouped by the workman's work had he performed his contract. The defendants appealed on the question of damages, contending that they were limited to the possible net profit on the coal the workman would have raised.

ROCHE, L.J., delivered the judgment of the court allowing the appeal, and said that the principle applicable was found in *British Westinghouse Electric and Manufacturing Co. Ltd.* v. *Underground Electric Railways Company of London Ltd.* [1912] A.C. 673, at p. 688. The plaintiffs must be placed, so far as money can do it, in as good a situation as if the contract had been performed. Both the measure of damages contended for by the plaintiffs and that contended for by the defendants were insufficient to yield a satisfactory result. The measure of damages adopted by the learned judge required some limitation, since the overhead expenses might never have been recouped, even had the contract been performed. The damages must be limited to the amount by which performance would have brought the employers' funds to meet such overhead expenses as were incurred, whether or not the particular workman performed his contract. The value of the workman's output must not be neglected, nor must net profit on coal sold be considered so as to ignore the loss of a contribution through the workman's work to expenditure properly made in reliance on output under the contract. The judge should ascertain the workman's probable output during the time of default, find its selling value, deduct the expenses which would have been incurred had the workman performed his contract, and which were not incurred when he failed to produce it, and award that amount to the employers. Overhead expenses incurred whether the workman worked or not should not be deducted. Apart from proof of conspiracy or some good ground in law for connecting further loss due to the cessation of work by other workmen, such further loss does not constitute a head of damage against a single workman. There must be a new trial.

COUNSEL: *W. H. Upjohn*, K.C., *A. A. Warren* and *G. R. Upjohn*; *F. R. Evershed*, K.C., and *Godfrey Parsons*.

SOLICITORS: *Smith, Rundell, Dods & Bockett*, agents for *T. S. Edwards & Son*, of Newport, Mon.; *Savage, Cooper and Wright*, agents for *W. H. F. Barklam*, of Cardiff.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Smart *v.* Lincolnshire Sugar Co. Ltd.

Finlay, J. 18th and 19th July, 1935.

REVENUE—INCOME TAX—SUGAR SUBSIDY—"ADVANCES" TO COMPANY—WHETHER ASSESSABLE—BRITISH SUGAR INDUSTRY (ASSISTANCE) ACT, 1931 (21 & 22 Geo. 5, c. 35), s. 2, Sched. III, cl. 6.

Appeal by the Crown from a decision of the Commissioners for the Special Purposes of the Income Tax Acts reducing an assessment to income tax made upon the respondents for the year ended the 5th April, 1933.

The respondents were engaged in the manufacture of sugar from beet grown in Great Britain. Under the British Sugar (Subsidy) Act, 1925, they received certain sums by way of subsidy in respect of sugar manufactured by them. They included those sums in their profit and loss accounts as trading receipts, and the sums were so treated in the calculation of their profits for income tax purposes. Certain companies, including that of the respondents, being in need of further assistance, the British Sugar (Assistance) Act, 1931 was passed, being described as "an Act to provide for the making of advances to certain companies . . ." Under this Act, the respondents, between the 18th October, 1931, and the 3rd January, 1932, received advances totalling some £17,494, none of which sum became repayable, although it was liable under the Act to become so in certain contingencies. In the assessment of the respondents to income tax for the year in question, the £17,494 was taken into account. For the Company it was contended that the advances were in the nature of loans, because liable to repayment in certain circumstances. For the Crown it was contended that they were in the nature of revenue and constituted trading receipts. The Commissioners held that they were loans and reduced the assessment.

FINLAY, J., said that *Blake* v. *Imperial Brazilian Railway*, 2 T.C. 58, *The Nizam State Railway Co.* v. *Wyatt*, L.R. 24, Q.B.D. 548, and *Pretoria-Pietersburg Railway Co. Ltd.* v. *Elwood*, 95 L.T. 468, in his opinion depended on their own facts. They had recently been reviewed by the Master of the Rolls in *Seaham Harbour Dock Co.* v. *Crook*, 47 T.L.R. 23, at p. 24. That case ought not to be taken as an authority for saying that a subsidy granted by a government department could not be subject to income tax. But in the 1931 Act the word "advance" was used. That, no doubt, did not necessarily mean a loan, but in his (his lordship's) opinion the word did contemplate some form of repayment. The case turned on s. 2 of the Act with cl. 6 of the Third Schedule. By that clause, the advance was in certain circumstances to be repaid at least partially. By s. 2 (3) of the Act, if a company receiving an advance went into liquidation, the advance was to be repaid. If the advance were liable both to tax on receipt and to be repaid on the happening of an event a week after the receipt, the Crown would be receiving tax on a sum which it could afterwards recover. The Commissioners were, therefore, right in holding that the advances to the respondents were in the nature of loans, and accordingly,

unlike a subsidy which was a payment by way of gift, not liable to tax.

COUNSEL: *The Attorney-General* (Sir Thomas Inskip, K.C.) and *R. P. Hills*, for the Crown; *R. E. Borneman*, for the respondents.

SOLICITORS: *The Solicitor of Inland Revenue; Romer, Skan & Brashier.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

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Parliamentary News.

Progress of Bills.

House of Lords.

The following Bills received the Royal Assent on 2nd August:—

Appropriation.
Ascot District Gas and Electricity.
Assurance Companies (Winding-up).
Ayr Burgh Extension, &c. Order Confirmation.
Ayr County Council (General Powers) Order Confirmation.
Beckenham Urban District Council.
Birmingham Corporation.
Blackpool Improvement.
Bognor Gas and Electricity.
Boston Corporation.
Bournemouth Gas and Water.
Bridgwater Corporation.
British Sugar (Subsidy).
Camborne Water.
Cattle Industry (Emergency Provisions) (No. 2).
Chichester Corporation.
Criminal Lunatics (Scotland).
Croydon Corporation.
Derwent Valley Water.
Diseases of Animals.
Easington Rural District Council.
Exeter Corporation.
Fylde Water Board.
Gelligaer Urban District Council.
Gloucester Corporation.
Government of India.
Harrogate Corporation.
Hertfordshire County Council.
House of Commons Disqualification (Declaration of Law).
Housing.
Housing (Scotland).
Hoylake Urban District Council.
Ipswich Corporation (Trolley Vehicles) Order Confirmation.
Isle of Man (Customs).
Kilmarnock Burgh Extension, &c. Order Confirmation.
Law Reform (Married Women and Tort-feasors).
Leith Harbour and Docks Consolidation Order Confirmation.
London Building Act (Amendment).
London County Council (Money).
London Midland and Scottish Railway.
London Passenger Transport.
London Passenger Transport (Finance).
Maidstone Corporation.
Metropolitan Common Scheme (Palewell) Confirmation.
Metropolitan Water Board.
Milford Docks.
Ministry of Health Provisional Order Confirmation (Croydon).
Ministry of Health Provisional Order Confirmation (Cuddington Joint Hospital District).
Ministry of Health Provisional Order Confirmation (East Surrey Water).
Ministry of Health Provisional Order Confirmation (Eastbourne).
Ministry of Health Provisional Order Confirmation (Fylde Preston and Garstang, Joint Smallpox Hospital District).
Ministry of Health Provisional Order Confirmation (Harpenden Water).
Ministry of Health Provisional Order Confirmation (Harrogate).
Ministry of Health Provisional Order Confirmation (Huntingdon).
Ministry of Health Provisional Order Confirmation (Leigh Joint Hospital District).
Ministry of Health Provisional Order Confirmation (Metropolis Water).
Ministry of Health Provisional Order Confirmation (Monks and Princes Risborough Water).
Ministry of Health Provisional Order Confirmation (Morley).
Ministry of Health Provisional Order Confirmation (Norwich).
Ministry of Health Provisional Order Confirmation (Ottershaw Joint Hospital District).
Ministry of Health Provisional Order Confirmation (Oxford).
Ministry of Health Provisional Order Confirmation (Pwllheli).
Ministry of Health Provisional Order Confirmation (Rainham Water).
Ministry of Health Provisional Order Confirmation (South Oxfordshire Water).
Ministry of Health Provisional Order Confirmation (Watford).
Money Payments (Justices Procedure).
National Health Insurance and Contributory Pensions.
Newcastle-upon-Tyne Corporation (General Powers).
Nottingham Corporation.
Pier and Harbour Order (Scarborough) Confirmation.
Poole Road Transport.
Port of London.
Provisional Orders (Marriages) Confirmation.
Public Health (Water and Sewerage) (Scotland).
Reading Corporation.
Restriction of Ribbon Development.
St. Bartholomew's Hospital.
Salmon and Freshwater Fisheries.
Severn Navigation.
South Shields Corporation.
South Suburban Gas.
Stoke-on-Trent Corporation.
Stourbridge Navigation.
Sunderland Corporation.
Swansea Tramways.
Teachers (Superannuation).
Troon Burgh Extension, &c. Order Confirmation.
Unemployment Insurance (Crediting of Contributions).
University of Durham.
Urmston Urban District Council.
West Riding of Yorkshire Mental Hospitals Board (Superannuation).
Weymouth and Melcombe Regis Corporation.
Weymouth Waterworks.

House of Commons.

Voluntary Hospitals (Paying Patients) Bill.
Read Second Time. [31st July.

Questions to Ministers.

HIGH COURT OF JUSTICE (OFFICIAL SHORTHAND NOTE).

Mr. DOBBIE asked the Attorney-General whether he can inform the House if any decision has been reached on the question of appointing official shorthand writers in the Court of Appeal, the Court of Chancery, the King's Bench Division, and the Official Referee's Courts, or in any of the divisions of the High Court of Justice.

The SOLICITOR-GENERAL (Sir Donald Somervell): The question of instituting a system whereby an official shorthand note may be taken in the High Court of Justice is under close consideration, but I am not yet in a position to make a statement upon it. [2nd August.

Societies.

The Manchester Law Society.

The ninety-sixth annual meeting of the Manchester Law Society was held at the Law Library, Kennedy-street, on 23rd July, Mr. J. W. B. Hodgson (the retiring President) being in the chair.

The report of the Council presented at the meeting showed that the present membership was 398. There had been twelve meetings of the Council and twenty-seven meetings of committees during the year, and many subjects had been dealt with. Reference was made to the loss which the Society had sustained in the death of Mr. P. J. Skelton, who had been President of the Society in 1927 and Convener of the Judicature Committee since July, 1931, and had done very valuable work for many years as a Director of the Solicitors' Benevolent Association.

A memorandum, which was incorporated in the report, had been prepared on the question of compulsory registration of title, particularly in relation to Lancashire, in which the following conclusions were reached: (1) That there is no real public demand for compulsory registration of title; (2) that if established it would effect no real saving to the community in money; (3) that the establishment of land registries in the country and the preparation of the necessary plans and maps would occasion very great expense; and (4) that the application of the system to certain parts of the country, such as Lancashire, where the chief rent system obtains, would present great difficulty. It was also pointed out that any landowner who desires to register his title can at present do so.

A scheme for facilitating the apportionment of Sched. A assessments in the case of property sales had recently been instituted with the co-operation of the local Inspectors of Taxes by means of enquiry and notification forms.

The Council was not satisfied that sufficient effect had been given to the resolution adopted by the Associated Provincial Law Societies in June, 1933, on the question of allowance on taxation of the costs of attendance of country solicitors at trials in London. It was considered that such costs should be allowed as a matter of course unless the judge should order otherwise, and that the standard rate of the allowance should not be less than £5 5s. a day. The Council was in communication with the Liverpool Law Society with a view to further representations being made.

An invitation had been extended to and accepted by The Law Society to hold the Provincial Meeting in Manchester in 1938 on the occasion of the Manchester Society's Centenary.

The President in his address said that the Society was in a flourishing condition financially, and in numbers, though he would like to see the membership approximate more closely to the 100 per cent. membership attained by some of the smaller provincial societies.

He commended to the special consideration of the members the memorandum contained in the report on the subject of compulsory registration of title. It seemed to him that the carefully thought out provisions of the Law of Property Act, 1925, were working well and had already resulted in time and work in the investigation of title being saved. Parts of every title, however, still consisted of deeds dated before the Act, and it would not be until the whole title consisted of post-1925 deeds that the full benefit of the new system would be obtained.

Referring to the draft of the Solicitors Bill, 1935, which was dealt with in detail in the report of the Council, his personal view was that the question of the profession becoming overcrowded should be frankly faced and that there should be some drastic restriction of the number of articled clerks so as to assure to such clerks on qualification a reasonable chance of earning a decent living.

He regretted the present uncertainty as to the correct stamp duty on certain deeds created by the decisions in *McInnes* v. *The Commissioners of Inland Revenue*, and *Kimber & Co. and Another* v. *The Commissioners of Inland Revenue*, and hoped that the Commissioners would be in a position at an early date to make some ruling to remove the present doubts.

With regard to poor persons' procedure, he appealed for still more solicitors to add their names to the list of those willing to serve in this beneficent work, through which he had no hesitation in saying that many obtained justice to whom it might otherwise be denied.

He strongly approved of the suggestion that a system of official shorthand writers should be instituted in the King's Bench Division to save the waste of time and energy of judges in taking down the copious evidence of a cloud of witnesses. He also welcomed the announcement by Lord Hanworth that the Lord Chancellor intended to have the Rules of Court codified. On the subject of codification generally, he thought it would be in the interests, not only of the public, but of the legal profession that there should be a further gradual codification of important branches of the law and the law of distress at present contained in over fifty Acts of Parliament and in some 300 decided cases, and the various Statutes of Limitation might usefully be dealt with as a start.

With regard to divorce proceedings, he was impressed with the fact that undue hardship was imposed on many persons just above the poor persons' means limit through the fact that proceedings must be taken in London. In his opinion district registrars, at any rate, in the large provincial cities should have divorce jurisdiction.

In conclusion, he expressed his thanks to the officers and other members of the Council for their continuous support and assistance during his year of office, of which he would always carry with him pleasant memories.

The following officers were elected for the ensuing year: President, Mr. Willis Paterson; Vice-President, Mr. T. A. Higson; Hon. Treasurer, Mr. W. E. M. Mainprice; Hon. Secretary, Mr. A. H. Goulty.

The meeting terminated with a hearty vote of thanks to the retiring President for his address and for his services during the past year.

Rules and Orders.

THE SUPREME COURT FUNDS (No. 3) PROVISIONAL RULES, 1935. DATED JULY 22, 1935.

I, the Right Honourable Douglas McGarel Viscount Hailsham, Lord High Chancellor of Great Britain, with the concurrence of the Lords Commissioners of His Majesty's Treasury, and in pursuance of the powers contained in section 146 of the Supreme Court of Judicature (Consolidation) Act, 1925, and every other power enabling me in this behalf, propose to make the following Rules:—

1. In these Rules a Rule referred to by number means the Rule so numbered in the Supreme Court Funds Rules, 1927, as amended.

2. At the end of paragraph (2) of Rule 48 the following words shall be added:—

"or payable to such bank for the account named in such request."

3. At the end of paragraph (4) of Rule 48 the following words shall be added:—

"provided that where in matters in Lunacy payments are directed to be made to the Medical Superintendent or other officer of a Hospital or Institution for the benefit of a patient the Accountant-General may without previous request remit the amounts so directed to be paid by cheque crossed generally."

4. These Rules may be cited as the Supreme Court Funds (No. 3) Provisional Rules, 1935, and the Supreme Court Funds Rules, 1927, as amended, shall have effect as further amended by these Rules.

And I, the said Douglas McGarel Viscount Hailsham, Lord High Chancellor of Great Britain, with the same concurrence as aforesaid, hereby certify that on account of urgency these Rules should come into immediate operation and hereby make the said Rules to come into operation forthwith as Provisional Rules.

Dated the 22nd day of July, 1935.

Hailsham, C.

Walter J. Womersley, *James Blindell* } Lords Commissioners of His Majesty's Treasury.

A series of ten lectures on the subject of the 1925 Property Statutes and the decided cases thereon and generally as to the working of the Acts during the last ten years will be given by Mr. A. F. Topham, K.C., during Michaelmas Term, commencing Wednesday, 9th October, 1935, at 6.45 p.m. The lectures, which have been arranged by the Solicitors' Managing Clerks' Association, will be given at Essex Hall, Essex Street, Strand, facing the Law Courts. Tickets for the course of ten lectures can be obtained at the price of one guinea from the offices of the Association at Arundel House, Arundel Street, Strand, W.C.2. Full details will be announced in due course.

Legal Notes and News.

Honours and Appointments.

The King has been pleased, on the recommendation of the Secretary of State for Scotland, to whom the names were submitted by the Lord Justice General, to approve of the rank and dignity of King's Counsel to his Majesty in Scotland being conferred on Mr. CHARLES MACKINTOSH, Advocate, and Mr. ALEXANDER GALLOWAY ERSKINE HILL, Advocate.

The King has been pleased to appoint RAO BAHADUR PAKALA VENKATARAMANA RAO NAYUDU, to the office of Judge of the High Court of Judicature at Madras in the place of Sir Vepa Ramesam, who has retired.

The Lord Chancellor, under the powers conferred on him by s. 79 of the London Passenger Transport Act, 1933, has appointed Mr. ROLAND BURROWS, K.C., to be the Standing Arbitrator to hear and determine any questions which may be referred to him under ss. 73 to 78 and the 14th Schedule to the London Passenger Transport Act, 1933, in the place of Mr. David Rowland Thomas, K.C., who has resigned the office.

The Lord Chancellor has appointed Mr. ALFRED MARTIN GEORGE DANIEL to be the Registrar of Warminster County Court as from the 6th August, 1935. Mr. Daniel was admitted a solicitor in 1906.

The Board of Trade have made the following appointments with effect from the 1st August, 1935 :—

Mr. PERCY MANLEY MILWARD, Official Receiver in Bankruptcy, at Stoke-upon-Trent, to be Official Receiver for the Bankruptcy Districts of the County Courts holden at Manchester, Salford, Ashton-under-Lyne and Stalybridge, Bolton, Oldham, Rochdale and Stockport, in the place of Mr. R. K. Clark.

Mr. HERBERT HORNBY GAINE, Assistant Official Receiver in the Bankruptcy (High Court) Department, to be Senior Assistant Official Receiver in Bankruptcy attached to the High Court in the place of Mr. C. R. B. Park. Mr. Gaine was called to the Bar by Lincoln's Inn in 1899.

Mr. FRED CARTER ORMROD, Assistant Official Receiver in the Companies (Winding-up) Department, to be Official Receiver for the Bankruptcy Districts of the County Courts holden at Hanley and Stoke-upon-Trent, Crewe, Nantwich, and Sandbach, Macclesfield, Stafford, Shrewsbury and Newtown, in the place of Mr. P. M. Milward.

Mr. ALEXANDER LAUDER MEDCALF to be Official Receiver for the Bankruptcy Districts of the County Courts holden at Southampton, Bournemouth, Winchester, Portsmouth and Newport and Ryde, Isle of Wight.

Mr. AMBROSE BURY, K.C., M.P., who has represented Edmonton in two Parliaments as a Conservative, has been appointed a district judge of Northern Alberta.

Mr. ALAN FREDERICK GREENWOOD, M.A., LL.B., solicitor, a member of the Leeds Town Clerk's staff, has been appointed Deputy Town Clerk of Gloucester. Mr. Greenwood was admitted a solicitor in 1930.

Professional Announcements.

(2s. per line.)

SOLICITORS & GENERAL MORTGAGE & ESTATE AGENTS ASSOCIATION.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office : 12, Craven Park, London, N.W.10.

Notes.

Hornsey Liberal Association, at their annual meeting recently, unanimously adopted as prospective Parliamentary Liberal candidate, Mr. H. J. Baxter, barrister-at-law.

The next General Quarter Sessions of the Peace for the borough of Walsall will be held at the Guildhall, Walsall, on Thursday, the 22nd day of August, 1935, at 10 o'clock in the forenoon.

Judge Beazley adjourned the Southend County Court recently while a film was made in the courtyard of police officers smashing automatic machines taken from raided premises.

The International Academy of Comparative Law held its tenth annual session in the Peace Palace at The Hague on 31st July and following days. A vacancy in the number of vice-presidents was filled by the election of Professor R. W. Lee, of Oxford.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 15th August, 1935.

	Div. Months.	Middle Price 7th Aug. 1935.	Flat Interest Yield.	‡Approximate Yield with redemption
			£ s. d.	£ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	116	3 9 0	2 19 3
Consols 2½%	JAJO	86	2 18 2	—
War Loan 3½% 1952 or after	JD	107	3 5 5	2 19 5
Funding 4% Loan 1960-90	MN	119½	3 6 11	2 17 9
Funding 3% Loan 1959-69	AO	104¼	2 17 6	2 15 3
Victory 4% Loan Av. life 23 years	MS	117½	3 8 1	2 18 10
Conversion 5% Loan 1944-64	MN	122	4 2 0	1 19 4
Conversion 4½% Loan 1940-44	JJ	112	4 0 4	2 2 10
Conversion 3½% Loan 1961 or after	AO	108¼	3 4 6	3 0 5
Conversion 3% Loan 1948-53	MS	104½xd	2 17 5	2 11 10
Conversion 2½% Loan 1944-49	AO	102	2 9 0	2 4 7
Local Loans 3% Stock 1912 or after	JAJO	97	3 1 10	—
Bank Stock	AO	370½	3 4 9	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	89	3 1 10	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	97	3 1 10	—
India 4½% 1950-55	MN	114	3 18 11	3 6 0
India 3½% 1931 or after	JAJO	98	3 11 5	—
India 3% 1948 or after	JAJO	86	3 9 9	—
Sudan 4½% 1939-73 Av. life 27 years	FA	118	3 16 3	3 9 3
Sudan 4% 1974 Red. in part after 1950	MN	115	3 9 7	2 15 4
Tanganyika 4% Guaranteed 1951-71	FA	115	3 9 7	2 15 3
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	111	4 1 1	2 12 6
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	109	3 13 5	3 7 6
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	103	3 12 10	3 9 3
Canada 4% 1953-58	MS	111xd	3 12 1	3 3 9
*Natal 3% 1929-49	JJ	100	3 0 0	3 0 0
*New South Wales 3½% 1930-50	JJ	100	3 10 0	3 10 0
*New Zealand 3% 1945	AO	101	2 19 5	2 17 7
†Nigeria 4% 1963	AO	115	3 9 7	3 3 7
*Queensland 3½% 1950-70	JJ	100	3 10 0	3 10 0
South Africa 3½% 1953-73	JD	107	3 5 5	2 19 10
*Victoria 3½% 1929-49	AO	101	3 9 4	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	96	3 2 6	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	106	3 6 0	3 0 10
Leeds 3% 1927 or after	JJ	95	3 3 2	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	108	3 4 10	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	82½xd	3 0 7	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	96xd	3 2 6	—
Manchester 3% 1941 or after	FA	97	3 1 10	—
*Metropolitan Consd. 2½% 1920-49	MJSD	100xd	2 10 0	2 10 0
Metropolitan Water Board 3% "A" 1963-2003	AO	100	3 0 0	3 0 0
* Do. do. 3% "B" 1934-2003	MS	98½xd	3 0 11	3 1 0
Do. do. 3% "E" 1953-73	JJ	101	2 19 5	2 18 7
Middlesex County Council 4% 1952-72	MN	114	3 10 2	2 18 10
† Do. do. 4½% 1950-70	MN	116	3 17 7	3 2 11
Nottingham 3% Irredeemable	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	106½	3 5 9	3 3 7
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	115½	3 9 3	—
Gt. Western Rly. 4½% Debenture	JJ	127½	3 10 7	—
Gt. Western Rly. 5% Debenture	JJ	138½	3 12 2	—
Gt. Western Rly. 5% Rent Charge	FA	136½	3 13 3	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	135½	3 13 10	—
Gt. Western Rly. 5% Preference	MA	123½	4 1 0	—
Southern Rly. 4% Debenture	JJ	114	3 10 2	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	113½	3 10 6	3 4 10
Southern Rly. 5% Guaranteed	MA	135½	3 13 10	—
Southern Rly. 5% Preference	MA	123½	4 1 0	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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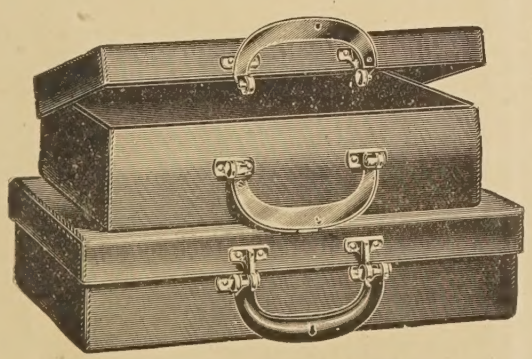

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